

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9132 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BALRAM @ BALLU BHAVANISHANKAR SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 24th September, 1999, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'dangerous person' whose activities are prejudicial to the maintenance of public order. Two offences punishable under Chapters XVI & XVII of the IPC are registered against the petitioner. Besides, two witnesses have given statements before the police in respect of two incidents which occurred on 2nd September, 1998, and 15th August, 1998 respectively. It is stated that on 2nd September, 1998, at around 2-30 in the afternoon, the witness was entering the Municipal Corporation building, at that time, the petitioner and one another intercepted him and demanded a sum of Rs.500/-. The witness expressed his inability to pay such money, which enraged the petitioner. He started beating the witness, took out a knife and extended the threat of dire consequences. He also robbed the witness of his cash worth Rs.300/-. The milieu attracted the people around and a crowd had gathered. The crowd also was threatened and pursued with open knife. The terrified people started running helter-skelter causing obstruction to the vehicular traffic. On 15th August, 1998, the witness was passing-by the road when the petitioner and two of his accomplices stopped him and demanded a sum of Rs.3000/-. Upon being refused, the petitioner was enraged and started beating, and the petitioner robbed the witness of cash worth Rs.1500/-. The witness raised an alarm which attracted the attention of the people of the locality and the petitioner, with a view to threatening the people, pursued the crowd with an open knife. This created a chaos disturbing the public tranquility.

It is submitted that none of the offences alleged to have been committed by the petitioner has the element of breach of public order. At the most, the said offences can be said to be a problem of law and order. It is further contended that in a similar set of facts, the Supreme Court in the matter of MUSTAKMIYA JABBARMIYA SHAIKH VS M.M.MEHTA COMMISSIONER OF POLICE & ORS (1995 {2} GLR, 1268) and of MRS. T.DEVKI VS GOVERNMENT OF TAMIL NADU & ORS (AIR 1990, SC, 1086), has held that the activities of the concerned detenu did not amount to breach of public order. In the present case also, the facts being similar, the same principle should be applied. Further, a representation against the order detention was made to the Additional Chief Secretary (Home) on 24th October, 1998 which has not been decided promptly. Hence, though the petitioner may be a

'dangerous person' within the meaning of section 2 (c) of the Act, his activities can not be said to be prejudicial to the maintenance of public order. Ms. Punani has relied upon the judgment of the Supreme Court in the matter of AMANULLA KHAN KUDEATALLA KHAN PATHAN VS STATE OF GUJARAT & ORS (JT 1999 {4} SC 455). She has contended that in the similar set of facts, the court held that the detenu's activities were prejudicial to the maintenance of public order.

I have perused the grounds of detention and the supporting materials. It appears that the petitioner and his accomplices were security personnel serving in the Municipal Corporation and at the relevant time were placed under suspension. In the offences registered against them, they had tried to extort money from the Municipal officers, having failed, they had robbed the said officers of their cash. Similarly, in the incident narrated by the witnesses, referred to hereinabove, the petitioner had tried to extort money, and on the crowd having gathered, tried to pursue the crowd with weapon. In the matter of Amanulla Khan (supra), the court has considered the previous judgment reported in the matter of Mustakmiya (supra), and has held that "...the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and therefore such activities can not be said to be a mere disturbance of law and order. In our considered opinion the activities of the detenu are such that the detaining authority was satisfied that such activities amount to disturbance of public order and to prevent such disturbance, the order of detention was passed." Mr. Prajapati has tried to distinguish the judgment relying upon the fact that the detenu there was a member of a well-known gang of criminals. Considering the antecedents of the detenu, the order of detention was upheld. I am unable to accept this argument. The activities carried on by the petitioner herein is detrimental to the public order. In the matter of Mrs.T.Devki (supra), following the judgment in the matter of Mustakmiya (supra), the court, on facts, held that the activities of the detenu were a problem of law and order, and can not be said to be detrimental to the maintenance of public order. On the facts stated hereinabove, it can not be gainsaid that the activities of the petitioner are detrimental to the public order. It appears that the representation was made to the Additional Chief Secretary (Home) on 24th October, 1998, which was received by his office on 26th October, 1998.

Since the Advisory Board meeting was scheduled on 27th October, 1998, it was placed before the Advisory Board on 27th October, 1998. It was under active consideration in the Government department at various level on 28th October to 30th October, 1998, and ultimately a formal decision was taken on 31st October, 1998 and was conveyed immediately. I am, therefore, unable to agree that the representation was not promptly attended to.

No other ground is urged before me.

Petition is dismissed. Rule is discharged.

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JOSHI